

## **REMARKS**

In the Office action mailed October 20, 2004, the Examiner rejected claims 1, 6-14, 16, and 24-33. By this amendment, Applicants cancel claims 9 and 10. After entry of the amendment, claims 1, 6-8, 11-14, 16, and 24-33 will be pending.

### **Double Patenting**

The Examiner rejected claims 1, 6-14, 16, and 24-33 as allegedly unpatentable over claims 1-12 of U.S. Pat. No. 6,713,411 to Cox, et al. under the judicially created doctrine of obviousness-type double patenting. Applicants request that this rejection be held in abeyance until the Examiner indicates that allowable subject matter exists.

### **Patentability under 35 U.S.C. § 102(b) over Chen**

The Examiner rejected claims 1, 6-14, 16, and 24-32 under 35 U.S.C. § 102(b) as allegedly anticipated by or, in the alternative, obvious in view of U.S. Pat. 3,900,625 to Chen ("Chen"). Applicants respectfully traverse this rejection. Chen discloses a "self-extinguishing composite laminate." See Title and Abstract. The laminate must contain at least the four following components: (1) a top polymeric film layer, (2) "a basic grid" of noninterwoven, reinforcing fibers, (3) a bottom polymeric film layer, and (4) a fire-retardant adhesive between the top and bottom film layers that surrounds the fibers, wets each of the inner surfaces of the top and bottom film layers, and holds the films and fibers together. Fig. 1, col. 2, lines 20-33, col. 4, lines 5-13. Applicants' independent claims 1 and 25 are directed to laminates comprising, *inter alia*, "a first layer of a nonwoven fabric having a fire retardant additive applied thereto." Chen does not disclose at least this element of claims 1 and 25.

Chen's grid of fibers is not "a nonwoven fabric." Nowhere does Chen refer to the fibers as fabric. Chen describes how to make the grid of fibers in Example 1 as fibers

“strung up on pegs, arranged as shown in FIG. 10 [sic, Fig. 8].” Col. 5, lines 15-17, Fig. 8. Alternately, in a couple of examples, the grid is described as a scrim “of 600 Denier polyester *fiber*, spaced ½ apart,” example 4, col. 6 (emphasis added), or “in which the longitudinal fibers were of 300 Denier glass fibers . . . and the transversal fibers were of . . . Dacron of 400 Denier,” example 5, col. 6. Chen does not rely on the fibers to provide any structural integrity to the laminate, but only to reinforce the films. See, e.g., col. 2, lines 23-25, col. 3, lines 56-63, col. 4, lines 24-26, and col. 7, lines 66-67. Chen teaches that the fibers “are noninterwoven and preferably noninterlocked [i.e., all fibers in one layer laying either above or below all fibers in the second layer], so that when exposed to mechanical force, the fibers can slide within the composite structure,” col. 2, lines 50-53, and interact with the surrounding adhesive such that “under overstress . . . the fibers . . . slip within the laminate so as to bunch and form a rope along the incipient tear thus limiting the spread of damage,” col. 4, 17-19. This is illustrated in Fig. 7 of Chen.

Accordingly, Chen does not disclose each and every element as recited in independent claims 1 and 25 as required by 35 U.S.C. § 102 for at least the above reason. Applicants respectfully request that the Examiner withdraw the rejection, as claims 1 and 25 are patentable over Chen.

As claims 6-8, 11-14, 16, and 24 depend from claim 1 and claims 26-32 depend directly or indirectly from claim 25, these claims are also patentable over Chen for at least the same reason as claims 1 and 25. Applicants respectfully request that the Examiner withdraw the rejection of these claims as well.

### **Patentability under 35 U.S.C. § 103(a) over Smith in view of Dunham**

The Examiner rejected claims 1, 6-14, 16, and 24-33 under 35 U.S.C. § 103(a) as allegedly obvious over U.S. Pat. No. 5,491,022 to Smith ("Smith") in view of U.S. Pat. No. 6,265,082 to Dunham et al. ("Dunham"). The Examiner explicitly acknowledged that Smith did not disclose that any of its three layers of polymeric film were a polyvinyl chloride, thereby implicitly acknowledging that Smith did not disclose the broader category of halogenated polymeric film as recited in independent claims 1 and 25. The Examiner relied on Dunham to remedy Smith's deficiency.

Applicants respectfully traverse this rejection, as Dunham does not qualify as 35 U.S.C. § 102 art. Dunham has a filing date of April 9, 1999, and claims the benefit of priority to a provisional application, filed April 9, 1998. The present application was filed on October 20, 2003, and claims priority as a continuation of U.S. Application No. 09/294, 056, filed April 19, 1999, which claims the benefit of priority to U.S. Provisional Application 60/082,330, filed April 20, 1998. Thus, Applicants' earliest filing date is 11 days after Dunham's earliest filing date. Applicants submit a declaration under 37 C.F.R. § 1.131 evidencing completion of at least independent claims 1 and 25 prior to Dunham's earliest filing date of April 9, 1998. Therefore, Dunham is not available as prior art against this application. Accordingly, the obviousness rejection based on the combination of Smith and Dunham must fall. As Smith does not disclose all of the elements of the pending claims, Applicants respectfully request that the Examiner withdraw the rejection and allow the pending claims.

Claims 6-8, 11-14, 16, and 24 depend from claim 1, and claims 26-33 depend directly or indirectly from claim 25. Accordingly, they are patentable over Smith for at

least the same reasons as claims 1 and 25. Applicants respectfully request that the Examiner withdraw the rejection and allow the pending claims.

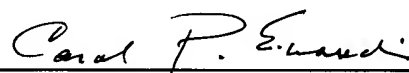
In view of the foregoing amendments and remarks, Applicants respectfully request the reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: March 21, 2005

By:   
Carol P. Einaudi  
Reg. No. 32,220

Attachments: Declaration by William C. Cox and Philip E. Harris under 37 C.F.R. § 1.131 and Declaration Exhibits 1 and 2.